

miscoding), with the added factor of VZ-MA's inability to control whether a CLEC pre-qualifies a loop before submitting the order.⁹⁴⁴

VZ-MA indicates that in a study it conducted using approximately 3,000 June orders of two-wire digital and two-wire xDSL loops, it determined that almost all of these orders received the due date that was requested or that is set forth in the C2C Guidelines. Moreover, VZ-MA stated that for a small subset of these orders where it first appeared that VZ-MA was unable to confirm the requested due date, VZ-MA researched the matter further and found that 95 percent of those orders were indeed given the correct interval based upon the fact that manual loop qualification was necessary on those orders.⁹⁴⁵

According to VZ-MA, the standard interval for a two-wire xDSL loop, for both CLEC and retail orders, is six business days after loop qualification. VZ-MA states that all retail orders are pre-qualified; however, CLECs have the option of qualifying a loop through the mechanized database or requesting a manual loop qualification. VZ-MA argues that if a CLEC pre-qualifies the loop (like VZ-MA), the six-day interval runs from VZ-MA's receipt of a valid LSR. In addition, if a CLEC submits an LSR requesting a manual loop qualification, this six-day interval runs from the return of the confirmation providing the qualification information. However, VZ-MA asserts, the calculation of the average interval measurement begins with the

⁹⁴⁴ VZ-MA Application, Appdx. A, Tab 3, at ¶ 78 (Guerard/Canny Decl.).

⁹⁴⁵ VZ-MA Application, Appdx. B, Vol. 45, Tab 520, at 4327-4328 (Transcript of Technical Session Held 8/17/00).

date that the valid LSR is received (i.e., the date the LSR requesting the manual loop qualification is received).⁹⁴⁶ VZ-MA argues that the additional 72 hours (48 hours to perform the manual loop qualification and 24 hours to return the LSRC) affect the average interval metrics so that it appears VZ-MA is not provisioning xDSL-capable loops to CLECs in the same amount it provides them for its retail service.⁹⁴⁷ This appears to be the issue VZ-MA's witness referenced during our technical session.⁹⁴⁸

VZ-MA also reports the missed installation appointment measurement for two-wire xDSL loops. A review of these data shows that VZ-MA missed more installation appointments for CLECs than for its retail ADSL service.⁹⁴⁹ VZ-MA responds that it is meeting the "proposed on-time installation standard" and that its results exceed the standard of acceptable

⁹⁴⁶ VZ-MA Application, Appdx. A, Tab 3, at ¶ 78 (Guerard/Canny Decl.).

⁹⁴⁷ Id. In its Guerard/Canny Declaration, VZ-MA mentions a study it conducted of over 400 randomly selected xDSL loop orders from June through July. Based upon this study, it determined that the average completed interval for pre-qualified CLEC orders (approximately 200 orders) was 6.46 in June and 5.40 in July. In comparison, VZ-MA's average completed interval for its retail ADSL service was 6.69 and 5.93 during the same period. Id. at ¶ 80. The Department will not comment upon the substance of this study and what weight it should be accorded because VZ-MA did not present the results of the study before us during our § 271 proceeding.

⁹⁴⁸ VZ-MA Application, Appdx. B, Vol. 45, Tab 520, at 4328 (Transcript of Technical Session Held 8/17/00).

⁹⁴⁹ From May through July, the percentage of missed installation appointments for CLECs, with a dispatch (PR-4-04) was: 3.28%, 3.55%, and 3.40%. During the same period, VZ-MA missed the following percentage of appointments for its retail service: 1.94%, 2.16%, and 2.04%.

performance set forth in the C2C Guidelines.

Covad, Vitti, and Rhythms have challenged VZ-MA's provisioning performance in this proceeding, arguing that VZ-MA does not meet confirmed provisioning due dates. Both Covad and Rhythms note that VZ-MA's own July 2000 data show that it fails to provision xDSL loop orders within six days over 50 percent of the time.⁹⁵⁰ Last year, Vitti argued that VZ-MA misses due dates because, among other things, VZ-MA fails to perform the necessary cross-wiring in its central offices.⁹⁵¹ VZ-MA reviewed the data Vitti provided in response to a record request and determined that 30 percent of the orders Vitti claimed VZ-MA missed were, in fact, met. In addition, VZ-MA argued that 86 percent of Vitti's November 1999 orders were completed on time, and during the October 1999 through March 2000 period, VZ-MA missed 5.8 percent of its appointments for Vitti's orders.⁹⁵² Vitti has not contested VZ-MA's performance this year. Rhythms made claims similar to Vitti's during last year's technical session, and for which it provided documentation. VZ-MA reviewed Rhythms' claims and

⁹⁵⁰ VZ-MA Application, Appx. B, Vol. 49, Tab 565, at 5502, 5575 (Transcript of Oral Argument Held 9/8/00). We note that VZ-MA began reporting this metric, PR-3-10, in July 2000. While participants had the July C2C Guideline report for the August technical session discussion of xDSL loops, VZ-MA's review of its provisioning of just pre-qualified loops, as opposed to loops qualified through VZ-MA's manual loop qualification procedure, was apparently not complete by this date (August 17, 2000).

⁹⁵¹ VZ-MA Application, Appx. B, Vol. 20, Tab 233, at 3184 (Transcript of Technical Session Held 12/7/99); see also VZ-MA Application, Appdx. B, Vol. 23, Tab 256 (Vitti's Response to RR-199).

⁹⁵² VZ-MA Application, Appdx. B, Vol. 32a-b, Tab 423, at ¶ 210 (VZ-MA May Checklist Aff.).

noted that its C2C Guidelines data for Rhythms indicate that its percentage of missed appointments dropped from over 21 percent in October, 1999, to 4.73 percent in March, despite a tenfold increase in Rhythms' orders.⁹⁵³

Covad is the only carrier that continues to make specific claims about VZ-MA's provisioning performance. First, Covad contends it takes 35 days on average to provide xDSL service because VZ-MA frequently misses its due dates.⁹⁵⁴ VZ-MA reviewed the summary Covad provided to support this claim and others, and argued that Covad's numbers do not add up and that Covad must be including orders canceled through no fault of VZ-MA, such as "no facilities available" in the total of VZ-MA-caused canceled orders.⁹⁵⁵ Covad acknowledges that it did, indeed, include "no facilities available" in the category of a VZ-MA-caused canceled order, constituting 32.4 percent of the total. Covad also admitted that it erroneously included orders that were canceled because a duplicate order was issued (6.5 percent of the total). Moreover, Covad indicates that eleven percent of the total is attributable to canceled orders due to long loops; eight percent is due to trenching; two percent is due to the presence of digital loop carrier ("DLC"); and one percent of the total orders that were canceled is attributable to

⁹⁵³ Id. at ¶ 211.

⁹⁵⁴ VZ-MA Application, Appdx. B, Vol. 38, Tab 462, at ¶ 60 (Covad Szafraniec/Katzman Decl.), corrected at VZ-MA Application, Appdx. B, Vol. 46, Tab 533, at 4556 (Transcript of Technical Session Held 8/21/00).

⁹⁵⁵ VZ-MA Application, Appdx. B, Vol. 45, Tab 520, at 4325-4326 (Transcript of Technical Session Held 8/17/00), citing VZ-MA Application, Appdx. B, Vol. 45, Tab 511 (Covad's Response to DTE-CVD-8).

electronics on the line.⁹⁵⁶

Second, Covad argues that VZ-MA claims with increasing frequency that no facilities are available running to the prospective Covad customer's premises. According to Covad, VZ-MA offers no relief in this situation, refusing to find or build copper facilities to meet Covad's request. Without copper facilities, Covad argues, it must either cancel a customer's order or ask the customer to accept downgraded service.⁹⁵⁷

VZ-MA responds to Covad's "no facilities" claim by noting that it has not installed copper in ten years in its feeder facilities and that finding a good copper pair is not easy. Moreover, VZ-MA explains that when it assigns a facility to a CLEC, that facility may not be a spare copper pair but, rather, may have been created through a line and station transfer (a process whereby VZ-MA will transfer a customer currently served by copper to a DLC-served loop to free up the copper loop for a CLEC that wants to provide xDSL service). VZ-MA states that since these copper loops are from ten to 60 years old, sometimes they do not work. VZ-MA will attempt to "clear" the pair or perform a transfer, but it is not always successful. The assignment of a facility to a CLEC does not mean that this facility will support the CLEC-

⁹⁵⁶ VZ-MA Application, Appdx. B, Vol. 45, Tab 520, at 4380-4381 (Transcript of Technical Session Held 8/17/00). VZ-MA later indicated that Covad failed to provide VZ-MA with the data underlying the summary contained in its response to information request DTE-CVD-8. Therefore, VZ-MA was unable to address the substance of Covad's claims during the technical session. Id. at 4381-4382.

⁹⁵⁷ VZ-MA Application, Appdx. B, Vol. 38, Tab 462, at ¶¶ 45-46 (Covad Berard/Clancy/Cutcher Decl.).

intended service, according to VZ-MA, and its technicians may not know that until they are out in the field.⁹⁵⁸

Third, related to the “no facilities” argument, Covad contends that its technicians make unnecessary “truck rolls” (i.e., personnel dispatches) because of VZ-MA’s poor loop provisioning. VZ-MA reviewed Covad’s data and determined that Covad dispatched its technicians 80 percent of the time after VZ-MA informed Covad that the orders had not been completed (primarily because of “no access” or “customer not ready” situations). Thus, VZ-MA argues that the wasteful “truck rolls” are of Covad’s own making.⁹⁵⁹

Fourth, according to Covad, VZ-MA overstates its claims of “no access” to CLEC customer premises. Covad argues that a review of its orders shows that less than half of the so-called “no access” orders were in fact a Covad-caused no access situation.⁹⁶⁰ VZ-MA responds that Covad’s “informal analysis” of its orders concerns VZ-NY orders, and that issues of “no access” to customer premises are significantly different in New York than they are in Massachusetts.⁹⁶¹

⁹⁵⁸ VZ-MA Application, Appdx. B, Vol. 45, Tab 520, at 4325, 4357-4358 (Transcript of Technical Session Held 8/17/00).

⁹⁵⁹ VZ-MA Application, Appdx. B, Vol. 32a-b, Tab 423, at ¶ 207 (VZ-MA May Checklist Aff.).

⁹⁶⁰ VZ-MA Application, Appdx. B, Vol. 38, Tab 462, at ¶¶ 47-51 (Covad Berard/Clancy/Cutcher Decl.).

⁹⁶¹ VZ-MA Application, Appdx. B, Vol. 42, Tab 494, at ¶¶ 114-115 (VZ-MA August
(continued...))

ii. Conclusions

The more experience VZ-MA gains, the better its performance becomes. This is borne out by VZ-MA's performance data. Its provisioning intervals, for both its retail ADSL service and the service it provides to CLECs, are decreasing, as are the percentage of missed installation appointments. However, VZ-MA's data indicate its provisioning performance has not yet reached formal parity. For the following reasons, however, the Department does not find that this apparent lack of parity, as defined in the C2C Guidelines, is sufficient to support a finding of non-compliance with the requirements of checklist item 4. In previous FCC § 271 Orders, the FCC has demonstrated a willingness, if warranted, to consider additional factors, including other performance metrics, when presented with data indicating sub-parity performance for some measurements.⁹⁶²

For the two most recent months reported by VZ-MA, its average completed interval measurements indicate that it takes approximately one day longer to provision an xDSL loop for a CLEC than it requires for its retail ADSL service. The C2C Guidelines standard is parity. VZ-MA has testified before the Department that its retail representatives do not use manual loop qualifications or engineering queries, which will add additional time to the process. If a loop is not pre-qualified through the mechanized database, VZ-MA's employee will simply tell

⁹⁶¹(...continued)
Checklist Aff.).

⁹⁶² See Bell Atlantic New York Order at ¶ 274.

a prospective customer that it is unable to provide ADSL service. VZ-MA has indicated that it performed over 11,000 manual loop qualifications in Massachusetts for CLECs since the beginning of this year. It is only logical that this added step would increase provisioning intervals for CLECs, thus making it appear that VZ-MA's performance for CLECs is out of parity, when in fact it is not out of parity. Last year, Covad stated that it had a study showing that it loses customers if they are required to wait a certain number of days to receive xDSL service. The figure that Covad cited was 30 days.⁹⁶³ Even if we were not to account for the additional time required to perform manual loop qualifications, the current one-day difference between the amount of time required to provision an xDSL loop for a CLEC and a VZ-MA customer does not lead us to conclude that this disparity would result in the CLEC losing a potential xDSL customer.

CLECs receive their requested xDSL provisioning interval approximately 99 percent of the time, and some of those requested provisioning intervals are outside of the six-day standard. When VZ-MA obliges a CLEC's request for a provisioning interval of greater than six days, it shows up in the performance measures as violating the standard, but this does not equal discrimination. Rather, VZ-MA is performing as a wholesale provider should. It gives CLEC customers the service they request. There is a stark inconsistency between the CLECs' argument that VZ-MA is unable to provision xDSL loops within six days and VZ-MA's

⁹⁶³ VZ-MA Application, Appdx. B, Vol. 20, Tab 233, 3270 (Transcript of Technical Session Held 12/7/99).

evidence that shows it is providing CLECs with their requested due date. We find it telling that although given the opportunity to question or challenge VZ-MA's witnesses about its analysis of CLEC-requested due dates, no CLEC did.

VZ-MA's data also show that it misses a higher percentage of installation appointments for CLECs than for its retail service. Again, we note that VZ-MA's performance is improving. Last October, VZ-MA missed over eleven percent of CLEC appointments for xDSL loops.⁹⁶⁴ This percentage has been steadily decreasing as the volume of CLEC xDSL loop orders increase, and we expect this trend to continue. We conclude that the difference, approximately one and a half percentage points in the most recent months, does not deny an efficient competitor a meaningful opportunity to compete in Massachusetts, as is evidenced by the increasing volumes of orders submitted by CLECs.⁹⁶⁵ Also, VZ-MA has explained persuasively how including loops that are pre-qualified and loops that require manual loop qualification in the measure creates a mis-impression of a lack of parity. While VZ-MA is persuasive, as noted above, we cannot credit its quantification of this issue because it was not presented before us during our § 271 proceeding. We will continue to monitor VZ-MA's provisioning performance closely and will take appropriate steps should the slight disparity in VZ-MA's performance

⁹⁶⁴ See VZ-MA Application, Appdx. B, Vol. 34a-b, Tab 443 (VZ-MA's Response to Information Request DTE-5-13).

⁹⁶⁵ For example, Covad has a higher xDSL market share in Massachusetts than VZ-MA does. See VZ-MA Application, Appdx. B, Vol. 49, Tab 565, at 5495 (Transcript of Oral Argument Held 9/8/00).

increase.

As mentioned above, only Covad continues to challenge VZ-MA's provisioning performance. Unfortunately, Covad failed to provide VZ-MA the documentation to support Covad's assertion regarding the 35-day service establishment period so that VZ-MA could review and comment upon it, and be questioned on its response during the technical sessions. To be clear, Covad's 35-day to service figure is not to be compared with the six-day provisioning interval (during which VZ-MA is responsible for connecting the network portion of the loop) measured in PR-3-10. According to Covad, from the time a customer requests service to the date that customer has xDSL service, 35 days elapse, on average.⁹⁶⁶ Since there is no end-to-end C2C metric, we have no standard against which to compare this figure, assuming it is accurate. Moreover, since this period of time is obviously influenced by actions taken by Covad, independent of VZ-MA, the relevance of such a statistic is unclear to the Department and certainly not established by anything Covad has presented.⁹⁶⁷ Therefore, we do not consider Covad's data to demonstrate poor VZ-MA provisioning performance.

Earlier this year, the Department oversaw a data reconciliation between VZ-MA and

⁹⁶⁶ VZ-MA Application, Appdx. B, Vol. 46, Tab 533, at 4572 (Transcript of Technical Session Held 8/21/00).

⁹⁶⁷ In response to RR-326, Covad provided a list of over 1,000 orders from June through August 15, 2000. For each order, this list provides the PON, the date the order was received, the first FOC date, the FOC date, and the date the order was closed. Based upon this information, it is difficult for the Department to determine for which Covad orders VZ-MA's provisioning performance was poor.

Covad for 132 of Covad's orders completed between February 7-11, 2000. The carriers agreed that 116 of the orders were completed on time. In addition, through this reconciliation, it was determined that six orders scored as "misses" should have been counted as "met," increasing VZ-MA's on-time performance to 92 percent.⁹⁶⁸

Covad also expressed concerns about missed due dates because of, among other things, the presence of DLC, load coils, and electronics. Given the enhanced capability of VZ-MA's mechanized database, we do not believe that these factors will continue to be a source of provisioning delays. Moreover, we agree with VZ-MA that "no facilities" issues are to be expected when dealing with copper plant that was installed between one and six decades ago. VZ-MA has persuaded the Department that it makes every effort to accommodate a CLEC request for spare loops. VZ-MA is not required by either FCC or Department rules to build copper facilities for CLECs. Moreover, CLECs have other options where spare loops do not exist. The Department approved a tariffed offering for line and station transfers (VZ-MA will perform these transfers at the request of a CLEC).⁹⁶⁹ In our Phase III Order, discussed below, the Department also directed VZ-MA to file a proposed tariff offering for transport from the feeder to the central office and to file a proposal that would allow a CLEC to offer xDSL services in a DLC environment. These options are reasonable substitutes in cases where spare

⁹⁶⁸ VZ-MA Application, Appdx. B, Vol. 32a-b, Tab 423, at ¶ 207 (VZ-MA May Checklist Aff.).

⁹⁶⁹ Appdx. E at 89-90 (Phase III Order).

copper loops are limited.

Finally, we are satisfied by VZ-MA's responses to Covad's claims of unnecessary truck rolls and inflated "no access" situations. We note that earlier this year, changes to the cooperative testing procedures were instituted to confirm "customer not ready," "no access," and customer cancellation conditions at the time of installation. According to VZ-MA, if its technicians encounter one of these conditions, they will call the CLEC so that the CLEC will have the opportunity to verify the condition or attempt to get customer access while the VZ-MA technician is on the line. During the call, the CLEC will give the technician a confirmation number, thus ensuring that VZ-MA and the CLEC can agree, if the need to do so arises, on why a job could not be completed, thereby minimizing issues associated with VZ-MA not being able to complete orders for customer reasons.⁹⁷⁰

d. Loop Quality

To review the installation quality of provisioned xDSL loops, the FCC considers the number of trouble reports made by CLECs within 30 days.⁹⁷¹

i. Discussion

According to VZ-MA's data, CLECs submit more trouble reports than VZ-MA does for

⁹⁷⁰ See VZ-MA Application, Appdx. B, Vol. 34a-b, Tab 443 (VZ-MA's Response to Information Request DTE-5-10).

⁹⁷¹ SBC Texas Order at ¶ 299.

its retail service.⁹⁷² VZ-MA argues that through the New York collaborative process, it developed, with CLECs, a process that would enable a CLEC to test cooperatively with VZ-MA a loop to verify continuity and to ensure that the loop meets the CLEC's requirements. If the loop tests appropriately, the CLEC will give VZ-MA a serial number to indicate that it has accepted the loop as working.⁹⁷³ According to VZ-MA, it appears that some CLECs are accepting loops and shortly thereafter submitting trouble tickets on those loops. VZ-MA offers a few explanations for this "phenomenon": (1) rather than having a provisioning order be denied because of unavailable facilities, a CLEC will "lock in" a loop and then request VZ-MA to fix the loop on a maintenance basis;⁹⁷⁴ and (2) some CLECs may not be performing as detailed an acceptance test as they should because of training or equipment limitations.⁹⁷⁵

VZ-MA reviewed xDSL loop troubles reported in the month of July that had recent service order activity (*i.e.*, the loop was provisioned during June or July), which amounted to almost 600 loop troubles. According to VZ-MA, a majority, almost 60 percent, of the troubles

⁹⁷² From April through July, CLECs made the following percentage of trouble reports within 30 days of a loop's provisioning (PR-6-01): 6.58%, 7.94%, 6.20%, and 8.46%. During the same period, VZ-MA noted the following percentage of trouble reports for itself: 3.60%, 3.30%, 2.34%, and 2.97%.

⁹⁷³ VZ-MA Application, Appdx. A, Tab 1, at ¶ 102 (Lacouture/Ruesterholz Decl.).

⁹⁷⁴ VZ-MA Application, Appdx. B, Vol. 45, Tab 520, at 4353-4354 (Transcript of Technical Session Held 8/17/00).

⁹⁷⁵ VZ-MA Application, Appdx. A, Tab 1, at ¶ 103 (Lacouture/Ruesterholz Decl.); Appdx. F (VZ-MA Response to RR-323).

were closed to NTF codes. Of the remainder, VZ-MA states that the vast majority (one third of the total troubles reported) were closed to cable conditions despite the fact that over 75 percent of these loops had recent acceptance testing (with the serial numbers provided) by the CLEC. VZ-MA argues its analysis supports its conclusion that CLECs are accepting loops that they should not be accepting.⁹⁷⁶

It appears from our record that no CLEC is disputing VZ-MA's explanation of the disparity in numbers of trouble tickets issued (i.e., CLECs accept loops and file trouble tickets immediately thereafter). However, Covad does state that when its technicians go out in the field to perform the installation (i.e., during the truck roll), they have experienced the following problems: (1) the loop has not been installed, (2) the loop has not been identified or tagged, (3) VZ-MA has installed a defective loop, (4) the loop was terminated at the wrong place, or (5) the loop has a facility problem.⁹⁷⁷ Covad also argues that if it does not accept a loop because of a provisioning problem, the loop falls into a "black hole" between different divisions of VZ-MA.⁹⁷⁸ VZ-MA responds that if Covad does not agree that the loop is good during the provisioning cooperative test, it should not accept it; should direct the VZ-MA technician to re-test it; and, if dissatisfied with the VZ-MA technician, should escalate the matter to a VZ-MA

⁹⁷⁶ Appdx. F (VZ-MA Response to RR-323).

⁹⁷⁷ VZ-MA Application, Appdx. B, Vol. 38, Tab 462, at ¶ 43 (Covad Berard/Clancy/Cutcher Decl.).

⁹⁷⁸ VZ-MA Application, Appdx. B, Vol. 38, Tab 462, at ¶ 65 (Covad Szafraniec/Katzman Decl.).

manager for resolution.⁹⁷⁹

ii. Conclusions

During a technical session last year, several CLECs acknowledged accepting loops that, absent additional work by VZ-MA, could not support xDSL service (*i.e.*, loops with load coils, excessive bridged tap) and then, immediately thereafter, filing trouble tickets to obtain loop conditioning. According to Covad, VZ-MA has a commitment to clear a trouble ticket within 24 hours and notes that VZ-MA has “for the most part met the fairly short turnaround in terms of resolving those kinds of conditioning issues.”⁹⁸⁰ Our record supports VZ-MA’s contention that CLECs sometimes accept loops they know will not support the service they intend to offer. Because VZ-MA is committed to addressing trouble tickets in a short amount of time, it appears CLECs willingly accept loops that require additional VZ-MA work. VZ-MA’s loop acceptance process provides the appropriate mechanism for a CLEC to express its concern about the possible incompatibility of an assigned loop to support xDSL service (*i.e.*, by rejecting the loop). The Department is not persuaded by Covad’s “black hole” argument – VZ-MA has created a clear escalation process that Covad may use as often as necessary. For the aforementioned reasons, the Department does not accord a significant amount of weight to this metric. We will not draw negative performance implications on VZ-MA’s part derived from

⁹⁷⁹ VZ-MA Application, Appdx. B, Vol. 42, Tab 494, at ¶¶ 140-141 (VZ-MA August Supplemental Checklist Aff.).

⁹⁸⁰ VZ-MA Application, Appdx. B, Vol. 20, Tab 233, at 3247-3248 (Transcript of Technical Session Held 12/7/99).

the conduct of some CLECs in playing an angle in the system. Accordingly, we find that VZ-MA provides nondiscriminatory access to loop installation for xDSL loops.

e. Maintenance and Repair

To demonstrate that a BOC provides maintenance and repair for CLEC xDSL loops in substantially the same time and manner as it does for its own retail customers, the FCC will review the average time to repair loops and the repeat trouble report rates.⁹⁸¹

i. Discussion

As was the case with VZ-MA's performance for certain maintenance and repair metrics for POTS loops, VZ-MA requires additional time to repair CLEC xDSL loops on average than it does to repair its own retail loops.⁹⁸² On the other hand, CLECs experience fewer repeat troubles on xDSL loops than does VZ-MA's retail service.⁹⁸³ The C2C Guidelines standard for both metrics is parity. VZ-MA argues that many of the same observations of CLEC behaviors affecting VZ-MA's POTS performance (e.g., CLECs' inability to isolate troubles, preference for Monday and not weekend repair appointments) also affect xDSL loops. For example, VZ-

⁹⁸¹ SBC Texas Order at ¶ 304.

⁹⁸² From April through July, the mean time to repair xDSL loops (MR-4-01) for CLECs was: 44.52, 46.63, 44.92, and 45.37. During that same period of time, VZ-MA's performance for its retail service was: 19.15, 20.02, 44.92, and 24.93.

⁹⁸³ From April through July, CLECs made the following percentage of repeat trouble reports within 30 days (MR-5-01): 13.91%, 14.42%, 14.79%, and 15.04%. VZ-MA's retail service made the following percentage of repeat trouble reports during the same period: 18.41%, 26.99%, 28.76%, and 25.00%.

MA data from June, 2000, show that almost 70 percent of CLEC trouble tickets made on Friday requested Monday appointments instead of the offered weekend appointment. VZ-MA notes that, in contrast, its retail xDSL customers declined an offered weekend appointment just 11 percent of the time.⁹⁸⁴ VZ-MA states that choosing a Monday appointment when a Saturday appointment is offered adds 36 to 48 hours to the overall MTTR.⁹⁸⁵

A second factor, which has an even greater affect on xDSL loops than other loops, according to VZ-MA, is the CLECs' inability to direct VZ-MA's technicians to the correct location of a trouble. VZ-MA argues that this CLEC deficiency causes, among other things, VZ-MA to perform multiple dispatches. According to VZ-MA, if a CLEC provides incorrect information, VZ-MA's technicians may determine that there is, in fact, no trouble (i.e., "Found OK" or "FOK," and "NTF"). Contrary to CLEC assertions that a "FOK" or "NTF" determination means that the VZ-MA technician is prematurely closing a trouble ticket, VZ-MA argues that this finding demonstrates that the CLEC failed to isolate the actual trouble point. To remedy this problem, VZ-MA notes that it is providing specialized training to all technicians who work on xDSL loops and has implemented a maintenance cooperative testing process, whereby the CLEC has the opportunity to accept or reject the findings of the VZ-MA technician

⁹⁸⁴ VZ-MA Application, Appdx. B, Vol. 42, Tab 494, at ¶ 138 (VZ-MA August Checklist Aff.).

⁹⁸⁵ Appdx. F (VZ-MA Response RR-323).

prior to the close of the trouble ticket.⁹⁸⁶

In support of its claim that CLECs are incorrectly locating sources of troubles, VZ-MA reviewed all trouble reports made by Covad between April 15 and June 15, 2000. According to VZ-MA, its analysis shows that more than half of the trouble reports submitted by Covad were closed as "NTF." In addition, Covad did not open a subsequent trouble report for over half of the VZ-MA-closed NTF tickets. VZ-MA notes that on 29 percent of the initial NTF tickets, Covad issued a repeat trouble report which never resulted in a found trouble. Only 16.8 percent of the reports closed to NTF, or under ten percent of all of Covad's trouble reports, resulted in a repeat trouble report that was eventually closed after VZ-MA found and fixed the problem.⁹⁸⁷ VZ-MA argues that if it prematurely and inappropriately closed trouble tickets without correcting the troubles, as alleged by CLECs, CLECs would have to open another report in order to clear the trouble. According to VZ-MA, the data simply do not support that CLEC argument.⁹⁸⁸

Covad argues, on the other hand, that VZ-MA's review of Covad's trouble tickets, described above, demonstrates that approximately 44 percent of Covad's reported troubles did,

⁹⁸⁶ VZ-MA Application, Appdx. B, Vol. 32a-b, Tab 423, at ¶ 208 (VZ-MA May Checklist Aff.); VZ-MA Application, Appdx. B, Vol. 42, Tab 494, at ¶ 146 (VZ-MA August Checklist Aff.).

⁹⁸⁷ VZ-MA Application, Appdx. B, Vol. 35, Tab 445 (VZ-MA's Response to Information Request DTE-5-11).

⁹⁸⁸ VZ-MA Application, Appdx. B, Vol. 42, Tab 494, at ¶ 144 (VZ-MA August Checklist Aff.).

in fact, have a trouble found. In addition, in response to VZ-MA's claim that 29 percent of Covad's repeat trouble tickets never resulted in a found VZ-MA trouble, Covad contends that this does not mean these tickets have been closed.⁹⁸⁹

Besides the CLECs' rejection of weekend appointments, VZ-MA argues that the average repair time, or MTTR, for xDSL loops is skewed by substantially longer repair times due to facilities issues for a small percentage of xDSL loops. VZ-MA contends that approximately 15 percent of the xDSL trouble tickets take more than 72 hours to clear, which pushes the MTTR and OOS > 24 metrics out of parity. According to VZ-MA, the primary source for these longer repair intervals is the need to refer the trouble to VZ-MA's construction or engineering divisions to provide a facility that meets the CLEC's testing requirements. For example, VZ-MA argues that CLECs will request different loops than the ones they were assigned (and which the CLECs accepted during the provisioning cooperative testing process) in order to increase transmission speed, rather than to achieve continuity. VZ-MA doubts whether these loops would have qualified for VZ-MA's retail ADSL service and asserts that such loops must have required "near-Herculean" efforts to get them provisioned.⁹⁹⁰

Rhythms attached to its July 2000 comments examples of inadequate responses by VZ-MA to Rhythms' maintenance and repair troubles. According to Rhythms, these trouble tickets

⁹⁸⁹ VZ-MA Application, Appdx. B, Vol. 45, Tab 520, at 4374 (Transcript of Technical Session Held 8/17/00).

⁹⁹⁰ Id. at ¶ 139; Appdx. F (VZ-MA Response to RR-323).

highlight some of the more egregious problems it has experienced with VZ-MA and demonstrate that VZ-MA closes trouble tickets without resolving the trouble.⁹⁹¹ VZ-MA reviewed six of the nine attached trouble tickets provided by Rhythms, noting that three of the nine were either too old or did not include the necessary amount of information for VZ-MA to investigate. According to VZ-MA, one ticket, opened at 1:00 a.m. on a Saturday morning, involved several central offices and required several technician "call-outs" to have tests performed in all of the central offices. VZ-MA indicates that service was restored for the DS3 at issue approximately twelve hours later. VZ-MA contends that the other five tickets support VZ-MA's statements regarding certain CLEC troubles that because of facilities issues required extended time to repair. VZ-MA states that three of these five troubles required multiple VZ-MA dispatches to provide an acceptable cable pair to Rhythms, and for two of the three, a re-dispatch was necessary because the VZ-MA technician was unable to reach the Rhythms counterpart to perform the cooperative test. Moreover, VZ-MA asserts that for the one ticket involving a vendor meet, three trouble tickets were closed to "NTF" after VZ-MA repaired the original problem on the circuit. According to VZ-MA, all of these tickets show the complexities of the relationships existing between VZ-MA and the CLECs when it comes to clearing xDSL loop trouble reports.⁹⁹² We note that Rhythms has not responded to VZ-MA's

⁹⁹¹ VZ-MA Application, Appdx. B, Vol. 38, Tab 462, at ¶22, Att. 2 (Rhythms Williams Aff.).

⁹⁹² VZ-MA Application, Appdx. B, Vol. 42, Tab 494, at ¶¶ 147-149 (VZ-MA August
(continued...))

findings with respect to these six trouble tickets.

Covad also argues that VZ-MA frequently misses vendor meetings.⁹⁹³ VZ-MA responds that Covad has provided no details to support this claim and notes that it has a process in place to ensure that such meetings are honored. In addition, VZ-MA mentions that it is working with Covad to develop further cooperative vendor meet processes.⁹⁹⁴ Lastly, Covad disagrees with VZ-MA's contention that the disparity between wholesale and retail xDSL maintenance results is due to the lack of tools. According to Covad, it developed the ability to send tone over its lines and it shares its testing results with VZ-MA.⁹⁹⁵

ii. Conclusions

As with the hot cut process, the repair of xDSL loops requires coordination between VZ-MA and the CLEC. Although Covad indicates it shares results of its testing and has added equipment to assist in identifying troubles, pro-active steps the Department supports, VZ-MA's evidence of having to rely on CLECs to direct VZ-MA technicians to the exact location of the trouble is uncontroverted in our record. VZ-MA's data indicate that its multiple dispatch rate is

⁹⁹²(...continued)
Checklist Aff.).

⁹⁹³ VZ-MA Application, Appdx. B, Vol. 38, Tab 462, at ¶ 70 (Covad Szafraniec/Katzman Decl.).

⁹⁹⁴ VZ-MA Application, Appdx. B, Vol. 42, Tab 494, at ¶ 149 (VZ-MA August Checklist Aff.).

⁹⁹⁵ VZ-MA Application, Appdx. B, Vol. 45, Tab 520, at 4386-4387 (Transcript of Technical Session Held 8/17/00).

almost double for CLECs than for VZ-MA's retail service, and its "FOK" and "NTF" rates are significantly higher for CLEC than VZ-MA retail customers.⁹⁹⁶ It is only logical that an unnecessary dispatch means that the VZ-MA technician is unable to attend to a bona fide trouble that much sooner. A CLEC's inability to locate the source of a problem not only delays repairs for that CLEC but other CLECs, too.

Thus, we find that VZ-MA's maintenance and repair performance is hindered by the CLECs' inability to identify the source of the trouble. We also find that several of VZ-MA's metrics are affected by the propensity of some CLECs to accept loops they concede are unable to support xDSL service, absent additional work by VZ-MA technicians, as well as the preference for Monday and not weekend repair appointments. Because CLECs are accepting loops that do not support xDSL service, VZ-MA's efforts are that much greater than with its retail xDSL service (e.g., involving VZ-MA's construction and engineering crews) and much more time-consuming. This CLEC practice and the resulting VZ-MA work are captured in VZ-MA's MTTR and OOS > 24 metrics, which on their face show a lack of parity. Covad argues that VZ-MA's own analysis of Covad's trouble reports shows that almost 45 percent of Covad's loops experienced troubles. The Department does not find this statistic surprising given Covad's admitted practice of accepting loops that it knows will not support xDSL service, absent additional effort by VZ-MA. While we find this CLEC practice troubling, we do not

⁹⁹⁶ VZ-MA Application, Appdx. B, Vol. 45, Tab 520, at 4280, Exh. 11 (Transcript of Technical Session Held 8/17/00); see also Appdx. F (VZ-MA Response to RR-323).

find VZ-MA's response, increased repair time to provide CLECs with xDSL-capable loops, problematic.⁹⁹⁷ Covad also argues that simply because VZ-MA has not found a problem from some of Covad's repeat trouble tickets does not mean trouble does not exist because it is possible that the repeat trouble ticket is still open. We disagree with this argument. It is clear to us that when VZ-MA states that 29 percent of Covad's repeat trouble tickets "never resulted in a found [VZ-MA] trouble," it means VZ-MA has closed almost a third of Covad's repeat trouble tickets as "NTF."⁹⁹⁸

Finally, we note that CLECs submit significantly fewer repeat trouble reports on xDSL loops than does VZ-MA for its retail customers. This metric demonstrates that once CLECs receive loops that are appropriate for xDSL service, they experience fewer problems than VZ-MA. Similarly, the network trouble report rates (for both loop and central office facilities), shows some difference between the CLEC and VZ-MA measurements, but the differences are

⁹⁹⁷ In our Phase III Order, we agreed with several CLECs, including Covad and Rhythms, that argued that they should not be required to opt in to VZ-MA's wideband testing system ("WTS"), which VZ-MA uses to isolate troubles. Rather, we found that CLECs should be permitted to use their own testing equipment to identify the location of troubles. However, in determining that VZ-MA's WTS should be optional, we noted that we would permit VZ-MA to assess a dispatch fee and would allow VZ-MA to separate from the relevant service metrics its performance with respect to CLECs that opt out of VZ-MA's testing system, a finding consistent with one made recently by the NYPSC. Phase III Order at 78-79.

⁹⁹⁸ VZ-MA Application, Appdx. B, Vol, 42, Tab 494, at ¶ 144 (VZ-MA August Checklist Aff.) (emphasis in original).

small.⁹⁹⁹ Therefore, we find that VZ-MA provides maintenance and repair for CLEC xDSL loops in substantially the same time and manner as it does for its retail customers.

6. Line Sharing

In its SBC Texas Order, the FCC stated that because SWBT's § 271 application was submitted well before the FCC's line sharing requirements became effective, it would be unfair to require SWBT to demonstrate full compliance with the Line Sharing Order, including showing that it had implemented the loop facility and OSS modifications necessary to accommodate CLEC line sharing requests.¹⁰⁰⁰

a. Discussion

VZ-MA states that CLECs may order line sharing today through its interconnection agreements. It contends that it has the OSS in place to receive line sharing orders, and that the OSS enhancements that will occur early next year will help VZ-MA's back-end work and will be transparent to the CLECs.¹⁰⁰¹ Today, CLECs have a mechanized interface to order line sharing. According to VZ-MA, the fact that manual work is required on the part of VZ-MA to

⁹⁹⁹ From April through July, the incidence of actual loop troubles, as captured by the network trouble report rate (MR-2-02) for CLECs was: 1.89%, 2.33%, 3.08%, and 2.77%. During the same period, the network trouble report rate for VZ-MA's retail service was: 1.13%, 1.25%, 1.39%, and 1.23%.

¹⁰⁰⁰ SBC Texas Order at ¶ 321.

¹⁰⁰¹ VZ-MA Application, Appdx. B, Vol. 45, Tab 520, at 4329 (Transcript of Technical Session Held 8/17/00).

process these orders has not affected its ability to process CLEC line sharing orders.¹⁰⁰²

VZ-MA also argues that for CLECs choosing the so-called Option A line sharing arrangement, in which the CLEC purchases the splitter and places it in the CLEC's collocation cage, line sharing is available immediately wherever those CLECs have collocation cages. In Massachusetts, CLECs may also use Option C to obtain line sharing, where the CLEC purchases the splitter but transfers ownership to VZ-MA and has the splitter placed in VZ-MA's central office space. VZ-MA contends that in an agreement reached earlier this year with CLECs that selected Option C, like Covad, it would use its best efforts to complete the first 25 applications of each CLEC by June 7, 2000, and would work to complete an additional 25 applications per month, assuming VZ-MA had received the splitters and material three weeks prior to the completion dates. VZ-MA states that in Massachusetts, it did not receive Covad's splitters until July. According to VZ-MA, 60 percent of the central offices in which Covad has requested line sharing are complete as of mid-August.¹⁰⁰³

Covad argues that VZ-MA has failed to meet its line sharing obligations because only 60 percent of Covad's requested central offices are complete as of early September. Moreover, Covad argues that there remain unresolved line sharing issues involving pricing, the

¹⁰⁰² Id. at 4331-4332.

¹⁰⁰³ Id. at 4361-4363.

provisioning and collocation augmentation intervals, and access to fiber-fed loops.¹⁰⁰⁴

Similarly, Rhythms argues that the following line sharing-related issues must be resolved before a determination is made that VZ-MA has met its burden of proof with respect to its line sharing obligations: line sharing over fiber, rates, implementation of OSS upgrades, collocation augmentation intervals, and line splitting.¹⁰⁰⁵ Digital Broadband argues that VZ-MA has denied access to line sharing beyond the deadline established by the FCC and contends that KPMG did not adequately address line sharing.¹⁰⁰⁶ Finally, AT&T argues that VZ-MA's position on line splitting is inconsistent with VZ-MA's obligations under the FCC's SBC Texas Order.¹⁰⁰⁷

b. Conclusions

As mentioned earlier, on September 29, 2000, the Department issued its Order approving in part and denying in part VZ-MA's proposed line sharing and xDSL tariff offerings.¹⁰⁰⁸ Specifically, we found that VZ-MA should reduce its provisioning interval

¹⁰⁰⁴ Id. at 5506-5507.

¹⁰⁰⁵ Id. at 5578-5579.

¹⁰⁰⁶ VZ-MA Application, Appdx. B, Vol. 46, Tab 565, at 5221 (Transcript of Oral Argument Held 9/08/00). Digital Broadband is correct that KPMG did not test VZ-MA's line sharing offering. When the Department developed and approved the MTP for the OSS test, VZ-MA was not required by the FCC to offer line sharing.

¹⁰⁰⁷ Id. at 5461. "Line splitting," as opposed to "line sharing," is the provisioning of both voice and data services over a single loop by a CLEC, through UNE-P. See Phase III Order at 36.

¹⁰⁰⁸ Phase III Order at 130.

immediately to the lesser of five business days or the shortest average interval VZ-MA has achieved for its own ADSL retail offering as of the effective date of our Order. Upon implementation of the OSS enhancements, we directed VZ-MA to reduce this interval further to four days.¹⁰⁰⁹ While VZ-MA states that the OSS enhancements would be necessary if the line sharing provisioning period was reduced to a “very short” interval,¹⁰¹⁰ we conclude that VZ-MA’s witness was referring to Rhythms’ proposal of a staggered 3-2-1 interval (whereby the provisioning interval would initially be three days and then drop after a certain amount of time to one day). The Department rejected Rhythms’s proposal in favor of a 5-4 provisioning interval.

After finding that the work required to perform the activities necessary to complete a cable augmentation and a splitter installation collocation application is less than the work required to complete a new collocation arrangement, the Department directed VZ-MA to reduce its proposed 76-business day collocation augmentation interval for line sharing applications to 40 business days.¹⁰¹¹ Based upon our review of relevant FCC Orders and rules, we determined that VZ-MA is not required to offer line splitting, nor did we direct VZ-MA to

¹⁰⁰⁹ Id. at 51-52.

¹⁰¹⁰ VZ-MA Application, Appdx. B, Vol. 45, Tab 520, at 4334 (Transcript of Technical Session Held 8/17/00).

¹⁰¹¹ Phase III Order at 69-70.

purchase splitters for use by CLECs.¹⁰¹²

As mentioned above, the Department declined VZ-MA's request to make mandatory VZ-MA's WTS. Instead, we agreed with CLECs that they may use their own testing system if they so choose.¹⁰¹³ We also directed VZ-MA to file proposed tariff provisions whereby a CLEC could offer line sharing from the end-users premises to the central office by placing certain equipment in VZ-MA's remote terminals (i.e., through the so-called "plug and play" option). VZ-MA was also directed to file proposed tariff provisions for the transport of a CLEC's traffic from the feeder distribution interface back to the central office.¹⁰¹⁴

In our Order, the Department also set rates. Notably, we rejected VZ-MA's proposal to assess charges for loop qualification and loop conditioning. Based upon Department precedent, we determined that in a TELRIC environment, VZ-MA's loops would be fiber-fed and, thus, would not require either qualification or conditioning to support xDSL service.¹⁰¹⁵ VZ-MA was directed to file line sharing-specific cost studies for several charges (e.g., collocation augmentation and engineering implementation charges), and we found that there should be no

¹⁰¹² Id. at 32-35, 39-41.

¹⁰¹³ Id. at 78-80.

¹⁰¹⁴ Id. at 86-89.

¹⁰¹⁵ Id. at 103-106.

charge to CLECs for cooperative testing because such testing is mutually beneficial.¹⁰¹⁶

We conclude that our Phase III Order addresses most, if not all, of the line sharing issues raised by CLECs in the § 271 proceeding.¹⁰¹⁷ Covad argued that VZ-MA has not met its § 271 obligations because line sharing is not available at all of the central offices requested by Covad. We disagree. Our record supports VZ-MA's contention that Covad failed to ship its splitters in a timely fashion for installation by VZ-MA at certain central offices requested by Covad. We cannot hold VZ-MA responsible for Covad's actions, which resulted in line sharing delays. VZ-MA has persuaded us that it is using its best efforts to complete Covad's Option C installations in all of Covad's requested central offices in a timely manner. Moreover, we find that Option A CLECs may offer line sharing today wherever they have collocation facilities.

We expect several CLECs to address the timing of the implementation of VZ-MA's OSS enhancements in their comments filed with the FCC. In our Phase III Order, we directed VZ-MA to implement these OSS upgrades in Massachusetts by April 1, 2001. That these enhancements are not in place today does not mean VZ-MA has failed to meet its § 271 obligations. Indeed, in our Order, we noted that VZ-MA began discussions with its vendor,

¹⁰¹⁶ Id. at 113, 116.

¹⁰¹⁷ Our Phase III Order also addressed CLEC concerns about several VZ-MA proposed provisions related to significant degradation and xDSL definitions. In those instances, the Department agreed with the CLECs that these provisions were inconsistent with FCC rules. See Phase III Order at 11-14, 18-20. In accordance with our Order, on October 13, 2000, VZ-MA filed and the Department approved a compliance filing with respect to those issues.

Telcordia Technologies, at the beginning of this year and that the issues involved, (e.g., approximately 25 million lines of code), are complex and not amenable to a quick resolution. CLEC collaboration is essential; in fact, CLECs must select the means of access to loop information, one option of which is direct access to VZ-MA's Loop Facility Assignment and Control System.¹⁰¹⁸ VZ-MA has testified that CLECs may submit their line sharing orders electronically. That these orders require some manual work on VZ-MA's part does not prevent a finding of nondiscriminatory access. We find that this manual processing will be short-lived and, even absent complete line sharing order flow-through, VZ-MA has demonstrated that it can handle increased volumes of CLEC orders requiring manual processing without delay.¹⁰¹⁹

For the aforementioned findings, we conclude that VZ-MA satisfies its obligations under checklist item 4.

E. Checklist Item 5 - Unbundled Local Transport

1. Standard of Review

Section 271(c)(2)(B)(v) requires a BOC to provide "[l]ocal transport from the trunk side

¹⁰¹⁸ Id. at 23-25.

¹⁰¹⁹ VZ-MA notes that between November 1999 and July 2000, it increased the number of representatives to handle orders that require manual processing by over 126 percent. In addition, VZ-MA notes that in June 2000, it provided 97.85 percent of all manually-processed LSRCs on time for UNEs. VZ-MA Application, Appdx. B, Vol, 42, Tab 494, at ¶ 48 (VZ-MA August Supplemental OSS Aff.).